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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DANIEL JAY PEREZ,

10 Plaintiff,

11 v.

12 CALVIN COGBURN, et al.,

13 Defendant.

CASE NO. C18-1800-JLR-BAT

**ORDER GRANTING MOTION TO
AMEND AND DIRECTING FILING
AND SERVICE OF SECOND
AMENDED COMPLAINT**

14 Plaintiff filed his 42 U.S.C. §1983 civil rights action in December 2018. After service of
15 the original complaint but prior to defendants' answers, plaintiff filed an amended complaint and
16 defendants have now filed answers. Dkts. 25, 40. Plaintiff now moves for leave to file a second
17 amended complaint and attaches a document entitled "second proposed supplemental amended
18 complaint." Dkt. 75. The "second proposed supplemental amended complaint" includes a new
19 defendant, Charlotte Joplin, and no longer names Lisa Anderson as a defendant. *Id.*

20 Defendants, in response to plaintiff's motion, indicate they do not object to plaintiff filing
21 a second amended complaint or a supplement to his first amended complaint, but request
22 clarification as to whether plaintiff is intending to file a second amended complaint, which would
23 act as a complete substitute for any prior complaints, or whether he is attempting to file a
supplement to his first amended complaint. Dkt. 79. Plaintiff, in reply, clarifies that his intent is

1 to file a second amended complaint, not to supplement, but also indicates he inadvertently left
2 out defendant Anderson in his proposed second amended complaint, and submits a corrected
3 proposed second amended complaint which includes defendant Anderson. Dkt. 80. The corrected
4 proposed second amended complaint filed with plaintiff's reply appears otherwise identical to
5 the proposed second amended complaint filed with plaintiff's motion. *Compare* Dkts. 75, 80.

6 Pursuant to Fed. R. Civ. P. 15(a), at this point in the litigation, plaintiff "may amend [his]
7 pleading only by leave of the court or by written consent of the adverse party; and leave shall be
8 freely given when justice so requires." In determining whether to allow an amendment to a
9 complaint Courts consider the following factors: "the presence or absence of undue delay, bad
10 faith, dilatory motive, undue prejudice to the opposing party, and futility of the proposed
11 amendment." *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).

12 Here, defendants do not object to plaintiff's filing of the proposed second amended
13 complaint included with plaintiff's motion to amend. Dkt. 79. The Court notes that plaintiff has
14 submitted a corrected second amended complaint in his reply which includes defendant
15 Anderson, who he indicates he inadvertently omitted, but makes no other changes. Dkt. 80.
16 Because defendant Anderson was previously named and has appeared in this action, and the
17 defendants do not otherwise object to the proposed second amended complaint, it does not
18 appear to the Court that defendants will be prejudiced by the plaintiff's correction to the second
19 amended complaint.

20 Accordingly, plaintiff's motion to file a second amended complaint (Dkt. 75, 80) is

21 **GRANTED** and it is further **ORDERED**:

22 (1) The Clerk is directed to **docket plaintiff's corrected proposed second amended**
23 **complaint included with his reply (Dkt. 80, at 9-69) as the second amended complaint** and

ORDER GRANTING MOTION TO AMEND
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add defendant Charlotte Joplin as a defendant to the docket.

(2) Service by Clerk

The Clerk is directed to send the following **to pre-existing defendants who have already appeared in this action**, Calvin Cogburn (Psychiatric ARNP, Special Offender Unit, Monroe Correctional Complex), Steven Jewitt (DOC Psychiatrist, Special Offender Unit, Monroe Correctional Complex), Daniel Schneeweiss (DOC Psychiatrist, Special Offender Unit, Monroe Correctional Complex), Jack Warner (Superintendent, Special Offender Unit, Monroe Correctional Complex), Lisa Anderson (Correctional Unit Supervisor, Monroe Correctional Complex), Kathy Grey (E-Unit Supervisor, Special Offender Unit, Monroe Correctional Complex), Tanya Brown (DOC Psychologist, Special Offender Unit, Monroe Correctional Complex), William J. Collins (DOC Psychologist/Psychiatrist, Special Offender Unit, Monroe Correctional Complex), Eric S. Rosmith (DOC Psychologist/Psychiatrist, Special Offender Unit, Monroe Correctional Complex), Robert Carsrud (DOC Psychologist/Psychiatrist, Special Offender Unit, Monroe Correctional Complex), Lamin Sanneh (DOC Psychologist/Psychiatrist, Special Offender Unit, Monroe Correctional Complex), C. Sais (DOC Psychologist Associate, Special Offender Unit, Monroe Correctional Complex), Bruce Gage (DOC Psychiatrist Overseeing, Special Offender Unit, Monroe Correctional Complex) **by e-mail**: a copy of plaintiff's second amended complaint, this Order, and notice of lawsuit.

The Clerk is directed to send to the newly named defendant Charlotte Joplin, ("Administrator", Special Offender Unit, Monroe Correctional Complex) **by email**: a copy of plaintiff's second amended complaint and this Order, notice of lawsuit and request for waiver of service of summons, and a waiver of service of summons.

(3) Response Required

1 **Defendant Charlotte Joplin shall have 30 days** within which to return the enclosed
2 waiver of service of summons. If defendant timely returns the signed waiver she shall have **60**
3 **days** after the date designated on the notice of lawsuit to file and serve an answer to the
4 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

5 If defendant fails to timely return the signed waiver she will be personally served with a
6 summons and complaint and may be required to pay the full costs of such service, pursuant to
7 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally
8 served shall file an answer or motion permitted under Rule 12 within **30 days** after service.

9 **To the extent the second amended complaint contains new allegations against the**
10 **pre-existing defendants who have already appeared in this action,** those defendants shall file
11 and serve amended answers to the second amended complaint, or a motion permitted under Rule
12 12 of the Federal Rules of Civil Procedure, within **60 days** after the date designated on the notice
13 of lawsuit.

14 (4) Filing and Service by Parties Generally

15 All attorneys admitted to practice before this Court are required to file documents
16 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
17 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
18 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand
19 corner the name of the magistrate judge to whom the document is directed.

20 Any document filed with the Court must be accompanied by proof that it has been served
21 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs shall
22 indicate the date the document is submitted for e-filing as the date of service.

23 (5) Motions, Generally

1 Any request for court action shall be set forth in a motion, properly filed and served.
2 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
3 part of the motion itself and not in a separate document. The motion shall include in its caption
4 (immediately below the title of the motion) a designation of the date the motion is to be noted for
5 consideration upon the Court's motion calendar.

6 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
7 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
8 motions for default, requests for the clerk to enter default judgment, and motions for the court to
9 enter default judgment where the opposing party has not appeared shall be noted for
10 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions
11 shall be noted for consideration no earlier than the third Friday following filing and service of the
12 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier
13 than the fourth Friday following filing and service of the motion. *Id.*

14 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
15 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
16 immediately preceding the date designated for consideration of the motion.

17 The party making the motion may electronically file and serve not later than 11:59 p.m.
18 on the date designated for consideration of the motion, a reply to the opposing party's briefs and
19 affidavits.

20 (5) Motions to Dismiss and Motions for Summary Judgment

21 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
22 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
23 Procedure should acquaint themselves with those rules. As noted above, these motions shall be

1 noted for consideration no earlier than the fourth Friday following filing and service of the
2 motion.

3 Defendants filing motions to dismiss based on a failure to exhaust or motions for
4 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to
5 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner
6 plaintiffs will have fair, timely and adequate notice of what is required of them in order to
7 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit
8 has set forth model language for such notices:

9 A motion for summary judgment under Rule 56 of the Federal Rules of
10 Civil Procedure will, if granted, end your case.

11 Rule 56 tells you what you must do in order to oppose a motion for summary
12 judgment. Generally, summary judgment must be granted when there is no
13 genuine issue of material fact – that is, if there is no real dispute about any
14 fact that would affect the result of your case, the party who asked for
15 summary judgment is entitled to judgment as a matter of law, which will
16 end your case. When a party you are suing makes a motion for summary
17 judgment that is properly supported by declarations (or other sworn
18 testimony), you cannot simply rely on what your complaint says. Instead,
**you must set out specific facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided in Rule 56(e),
that contradict the facts shown in the defendant's declarations and
documents and show that there is a genuine issue of material fact for
trial. If you do not submit your own evidence in opposition, summary
judgment, if appropriate, may be entered against you. If summary
judgment is granted, your case will be dismissed and there will be no
trial.**

19 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

20 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their
21 motion stricken from the Court's calendar with leave to re-file.

22 (6) Direct Communications with District Judge or Magistrate Judge

1 No direct communication is to take place with the District Judge or Magistrate Judge with
2 regard to this case. All relevant information and papers are to be directed to the Clerk.

3 (7) The Clerk is directed to send copies of this Order to plaintiff and to the Honorable
4 James L. Robart.

5 DATED this 8th day of November, 2019.

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8 BRIAN A. TSUCHIDA
United States Magistrate Judge